

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

SERVED DEC 5 1996

Issued by the Department of Transportation
on the 20th day of November, 1996

Application of

**NORDIC EUROPEAN AIRLINES INTERNATIONAL
AB
D/B/A NORDIC EUROPEAN AIRLINES**

Docket OST-96-1616

for a foreign air carrier permit under
49 U.S.C. section 41301

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

This order issues a foreign air carrier permit to Nordic European Airlines International AB, d/b/a Nordic European Airlines, to engage in charter foreign air transportation of persons, property and mail between Sweden and the United States pursuant to the bilateral aviation undertakings of the United States and Sweden.¹

Application

By application filed August 2, 1996, Nordic European Airlines requests that we issue it a foreign air carrier permit to conduct charter operations between Sweden and the United States consistent with the provisions of the open-skies aviation agreement between the United States and Sweden.²

Nordic European states that it has been designated by the Government of Sweden to perform the proposed services; it is substantially owned and effectively controlled by citizens of Sweden; and it is operationally and financially fit to perform the proposed services.

¹ Nordic European Airlines originally filed under the name Nordic East International Aircraft AB d/b/a Nordic East Airways AB. On September 5, 1996, Nordic European amended its application by notifying the Department that it had changed the name to Nordic European Airlines International AB d/b/a Nordic European Airlines.

² Nordic European holds Department exemption authority, granted September 30, 1996, and confirmed by Order 96-10-17 (Docket OST-96-1617), to engage in charter services identical to those at issue here.

No answers were filed in response to Nordic European's permit application.

Decision

We have reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart Q procedures.³ The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.⁴ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Nordic European is qualified to conduct the proposed operations.

Public Interest Considerations

During April 1995, the United States and Sweden concluded an open-skies bilateral aviation agreement which provides broad rights for the designated carriers of each side, including rights to conduct the charter services proposed by Nordic European.⁵

Operational and Financial Fitness

We find that Nordic European is operationally and financially fit to conduct the operations at issue here. Nordic European was formed in 1990 under the laws of Sweden and commenced operations in 1991. The applicant states that it currently serves European tourist destinations from Sweden and Germany. Nordic European has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years.⁶ Nordic European has been designated by its government

³ 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

⁴ 61 FR (41679), August 9, 1996.

⁵ See Annex II (Charter Air Transportation, Sections 1-3) of the Air Transport Services Agreement between the United States and Sweden effected by an exchange of notes December 16, 1944, as amended (the Agreement). The new "open-skies" provisions of the Agreement entered into force on June 16, 1995.

⁶ Nordic European states that its charter operations to and from the United States will be operated with B-737-300/400 and L-1011 aircraft which it will maintain under its own maintenance program which has been approved by the Swedish Civil Aviation authority. Additional maintenance will be performed under contract with British Airways, Monarch Airlines and Nordic Aero AB.

and holds effective authority from its homeland to conduct the proposed operations.⁷ The FAA's Air Transportation Division (AFS-200) has advised us that it knows of no reason why Nordic European's request for a foreign air carrier permit should not be approved.⁸ Finally, Nordic European has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.

Ownership and Control

We find that Nordic European is substantially owned and effectively controlled by citizens of Sweden.⁹ All of Nordic European's officers, directors and key management personnel, with the exception of its Cabin Manager, who is a citizen of Norway, are citizens of Sweden.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue Nordic European Airlines International AB a foreign air carrier permit in the form attached;
2. Nordic European Airlines International AB is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations;¹⁰ and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

⁷ By diplomatic note (No. 43) dated September 30, 1996, the Government of Sweden designated Nordic European to perform charter services under Annex II of the Agreement.

⁸ A copy of the FAA's August 14, 1996, memorandum has been placed in Docket OST-96-1616.

⁹ Nordic European is wholly owned by Gunnar Ohlsson, a citizen of Sweden.

¹⁰ This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

1. We issue, in the form attached, a foreign air carrier permit to Nordic European Airlines International AB authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in Sweden; via intermediate

points; and any point or points in the United States; and beyond; and to perform other charters in accordance with Part 212 of the Department's rules;

2. The exercise of the privileges granted above is subject to Nordic European Airlines International AB's compliance with the conditions listed in Attachment A;

3. To the extent not granted, we deny all requests for relief in Docket OST-96-1616;

4. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹¹ and

5. We will serve a copy of this order on Nordic European Airlines International AB, the Ambassador of Sweden in the United States; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (New York IFO).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Appendix A
Page 1 of 2

¹¹ This order was submitted for section 41307 review on November 20, 1996. On December 5, 1996, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

SUMMARY**FOREIGN AIR CARRIER PERMIT APPLICATION
Docket OST-96-1616****Nordic European Airlines International AB
d/b/a Nordic European Airlines**

Flag: Sweden

Federal Register Notice: 61 FR (41679), August 9, 1996

Filing Date: August 2, 1996

Authority Sought: Initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail consistent with the provisions of the open-skies aviation agreement between the United States and Sweden.

Pleadings: No answers were filed in response to Nordic European's application.

Public Interest: During 1995, the United States and Sweden concluded an open-skies aviation agreement which provides for broad route rights, including the charter authority at issue here, and other opportunities for the designated carriers of each side. [See Annex II (Charter Air Transportation, Sections 1-3) of the Air Transport Services Agreement between the United States and Sweden effected by an exchange of notes December 16, 1944, as amended (the Agreement). The new "open-skies" provisions of the Agreement entered into force on June 16, 1995.]

Fitness: Nordic European commenced operations in 1991. Nordic European obtained Department exemption authority on September 30, 1996, to perform charter foreign air transportation of persons, property and mail identical to the authority at issue here. That authority was subsequently confirmed by Order 96-10-17 (Docket OST-96-1617).

Nordic European holds appropriate licenses from its government and has had no safety

violations or fatal accidents in the last five years. Nordic European has experienced management and appears financially sound:

| | Financial Indicators | |
|----------------------------|-----------------------------|--------------------|
| (\$ millions) | | |
| year ending December 31 | <u>1995</u> | <u>1994</u> |
| Total Assets | 11.6 | 5.4 |
| Total Liabilities | 11.4 | 4.0 |
| Owner's Equity | .2 | 1.4 |
| Operating Profit or (Loss) | .4 | 1.2 |

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

Ownership and Control: Nordic European is a Swedish corporation, wholly owned by a Swedish citizen (Gunnar Ohlsson). All of Nordic East's key management personnel, with the exception of its Cabin Manager, are citizens of Sweden. Nordic European's Cabin Manager is a citizen of Norway.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

PERMIT TO FOREIGN AIR CARRIER

**NORDIC EUROPEAN AIRLINES INTERNATIONAL AB
D/B/A NORDIC EUROPEAN AIRLINES**

A Flag Carrier of Sweden

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of persons, property and mail, as follows:

**Between any point or points in Sweden; via intermediate points; and
any point or points in the United States; and beyond.**

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves Sweden for purposes of carrying traffic between the United States and Sweden.

The holder shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on **December 5, 1996**. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated

by the Government of and Sweden (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Sweden in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Sweden. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and Sweden become parties.

The Department of Transportation has executed this permit and affixed its seal on

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

(41301/40109) 12/96

